THE HON'BLE SRI JUSTICE V.ESWARAIAH

Date: 05-10-2007.

W.P.Nos. 8421 OF 2006, 9092 OF 2006 AND 16015 OF 2006

W.P.NO.8421 OF 2006:

Between:-

Dhiraj M.Patel.

…Petitioner.

And

The Vice Chairman and Housing Commissioner A.P.,
KPHB, Hyderabad and another.

…Respondents.

W.P.NO.9092 OF 2006:

Between:-

Dhiraj M.Patel.

…Petitioner.

And

The Station House officer, Kukatpally Police Station,
Kukatpally, Hyderabad.

…Respondent.

W.P.NO.16015 OF 2006:

Between:-

Dhiraj M.Patel.

…Petitioner.

And

Canara Bank, S.S.I Branch, Kukatpally, Hyderabad
Represented by its Manager and others.

…Respondents.

COMMON ORDER:

All these three writ petitions have been filed by the same petitioner Mr.Dhiraj M.Patel in respect of the property in question for various reliefs, as such, they are being disposed of by a common order.

W.P.No.8421 of 2006 is filed to issue a writ of mandamus, declaring the action of the Andhra Pradesh Housing Board (for short hereinafter referred to as "the Board") in not executing the title deed in respect of the allotted house NO. HIG 91, Phase-V, Venture-IV/V, KPHB Colony, Hyderabad even after paying the full and final amount payable by the petitioner in respect of the said property and even though possession was handed over to the petitioner on 23-1-2006 as illegal and arbitrary.

W.P.No.9092 of 2006 is filed by the petitioner to declare the action of the Station House officer, Kukatpally Police Station, Hyderabad in interfering with the civil disputes between the petitioner and the Board pertaining to the said house bearing No. HIG 91, Phase V, KPHB Colony, Kukatpally,

Hyderabad as illegal and arbitrary.

W.P.No.16015 of 2006 is filed to issue a writ of mandamus declaring the letter No.91/HIG/Ph.V/EE-WD/1997, dated 10-7-2006 of the Board in canceling the allotment of the said house in favour of the petitioner on the alleged default of payment of instalments and refund of Rs.9,16,909/- to the Banker of the petitioner namely Canara Bank, Kukatpally Branch, Hyderabad as illegal, arbitrary and to direct the respondents not to act upon the said letter.

The un-disputed facts are that the petitioner submitted an application dated 31-10-1995 with earnest money deposit (EMD) of Rs.51,500/- vide D.D.No.34727, dated 31-10-1995 drawn on Canara Bank, Kukatpally Branch for allotment of Higher Income Group (HIG) House in response to the Board's Notification No.11/E3/95, dated 20-9-1995 and the petitioner was allotted the house. According to the Board, the estimated cost (notified cost) has been fixed at Rs.5,15,000/- and the petitioner was asked to pay the second installment of 10% cost i.e., Rs.51,500/- within five months and third installment of 10% cost within nine months and the balance cost is payable in 40 quarterly instalments as per the intimation letter dated 20-1-1996. The petitioner deposited another sum of Rs.51,500/- vide D.D.No.801883, dated 29-2-1996 towards 10% cost of second installment. Another amount of Rs.51,500/- was also deposited vide D.D.No.747484, dated 10-7-1996 towards third

installment of 10% cost. After drawal of lots, the petitioner was allotted the house No.91, HIG Phase-V in the draw held on 19-12-1997 and the same was intimated to the petitioner on 19-2-1998. The cost of the subject scheme was revised to Rs.6,45,800/- and the petitioner was requested to pay 30% of the differential amount of Rs.39,240/- and a letter dated 4-1-2001 was sent to the petitioner confirming the final cost fixing at Rs.5,81,700/- excluding the additional amount of Rs.27,800/- towards developmental works and accordingly, the petitioner was asked to pay the balance sale price in 48 quarterly instalments. Pursuant to the letter of the Board dated 9-4-2000, the petitioner paid the 30% down payment of Rs.49,000/- vide D.D.No.683864, dated 4-4-2002.

According to the petitioner, he has been paying the installments regularly, but according to the respondents, the petitioner was not paying the quarterly instalments, but however, there is no dispute that as per the letter of the Board dated 4-1-2001, the final cost in respect of the house allotted to the petitioner was fixed at Rs.5,81,700/- excluding Rs.27,800/- towards the developmental works to be executed in future and the petitioner was allotted the house No.HIG 91, Phase-V and the balance sale price has to be paid in 48 quarterly instalments, which will be worked out and intimated in due course. As it was not at all intimated the exact quantum of the quarterly instalments, the petitioner made a representation

dated 25-11-2005 to inform him the total amount payable by him. In response to the said letter, the Executive Engineer of the Board vide his letter dated 26-11-2005 informed the petitioner that the total amount payable by him is worked out to Rs.7,56,059/- and the petitioner was asked to pay the said amount by 30-11-2005, execute the agreement of sale and take possession of the house immediately, otherwise, the allotment will be cancelled and the amount already paid will be forfeited.

It is not in dispute that the petitioner paid an amount of Rs.7,13,409/- through his Banker, Specialised S.S.I. Branch Canara Bank,, Hyderabad vide D.D.No.619827, dated 30-11-2005. The petitioner addressed a letter dated 19-1-2006 to the Executive Engineer of the Board, stating that he has already paid the cost of the house together with interest and requested him to put him in possession of the house. In fact, agreement of sale was also executed by the Executive Engineer in favour of the petitioner on 24-1-2006. As the demanded amount was paid, the Executive Engineer of the Board/second respondent in W.P.No.8421 of 2006 vide his handing over letter dated 23-1-2006 in Form No.7 requested the petitioner to present before the Deputy Executive Engineer who is authorised to hand over the possession of the allotted house No.91 to the petitioner, as the petitioner has completed with all the conditions set out in the allotment letter. On 23-1-2006 itself by another letter,

the second respondent/Executive Engineer of the Board, requested the Divisional Electrical Engineer, A.P. Transco, Kukatpally to give electricity service connection after completing necessary formalities as required by the petitioner-allottee of the said house No.91 of Phase-V of the Kukatpally Housing Board. He also addressed a letter to the Water Works Department to give Tap connection to the said house. The petitioner has taken possession of the house on 23-1-2006 itself and the petitioner addressed a letter dated 14-2-2006 to the second respondent requesting him to arrange the registration of the house in his name at the earliest.

As the petitioner obtained loan of Rs.7,13,409/- from the Canara Bank and paid the said amount by way of demand draft to the Board and as the said loan was sanctioned on the understanding that the Board will have to execute a sale deed in favour of the petitioner, which is to be submitted before the Bank, a letter dated 13-4-2006 was addressed by the Manager, Canara Bank to the petitioner requesting him to submit the sale deed duly registered in his favour by the Board. As the Board did not execute the regular sale deed, the petitioner addressed a letter dated 15-4-2006 to the Executive Engineer of the Board, stating that he has already paid the full cost of the said house duly taking the loan from Canara Bank, Kukatpally Branch on 30-11-2005 and there are no dues payable by him

and possession of the house was also delivered in his favour on 23-1-2006 and the petitioner is in physical possession and enjoyment of the same, a request has been made to communicate the format of the sale deed along with the process fee charges etc., to get the same prepared and executed in his favour.

It is stated that the respondents have not performed their obligations by executing regular sale deed in spite of the payment of the cost price and the staff of the Board started indulging in illegal interference, the petitioner sent a telegram dated 20-4-2006 to the second respondent, demanding to execute the registered document in respect of the said allotted house in occupation of the petitioner immediately and to advise the staff of the Board to refrain from indulging in any sort of problems, failing which, appropriate police action will be initiated. As there was no response even to the telegram also, the petitioner constrained to file W.P.No.8421 of 2006 on 24-4-2006 to direct the respondents to execute the title deed immediately.

This Court by order dated 24-4-2006 directed both the parties to maintain status quo with regard to the possession. In spite of the status quo order, when the Station House Officer, Kukatpally Police Station interfered with the civil disputes relating to the said house at the instance of the Board, the petitioner filed W.P.No.9092 of 2006 on 26-4-2006 to direct the

Station House Officer, Kukatpally Police Station not to interfere with the civil disputes relating to the said house.

Thereafter, the Vice Chairman of the Board/first respondent addressed a letter dated 10-7-2006 to the Banker of the petitioner namely Canara Bank, Kukatpally Branch, stating that the HIG house No.91 under Phase-V, KPHB Colony, allotted in favour of the petitioner has been cancelled by proceedings dated 18-4-2006 due to the fault in payment of instalments as per the schedule and the payment made was not accepted and the total amount paid by the individual amounting to Rs.9,16,909/- sent to the petitioner was returned as un-served and the petitioner filed W.P.No.8421 of 2006 mentioning that the petitioner obtained loan from the Canara Bank and an amount of Rs.7,12,409/- was released in favour of the Board on behalf of the petitioner through Canara Bank and accordingly, a cheque for Rs.9,16,909/- dated 10-7-2006 was sent to the Canara Bank to adjust the same to the loan account and disburse the remaining amount to the petitioner. Questioning the said letter dated 10-7-2006, the petitioner filed W.P.No.16015 of 2006. This Court while issuing notice before admission, by order dated 1-08-2006; "pending further orders, directed not to take any steps in pursuance of the said impugned letter dated 10-07-2006."

The Board filed a counter, stating that in response to the application of the petitioner dated 25-11-2005, the Board

worked out and intimated the petitioner on 26-11-2005 the tentative amount specifying that the balance is subject to verification by the Accounts Department and the petitioner sent a demand draft on 30-11-2005 for Rs.7,13,409/- through the application dated 30-11-2005. With regard to the possession; it is stated that letters were issued by the Executive Engineer on 3-4-2006, without express permission from the Vice Chairman of the Board and the Vice Chairman did not agree for the payment made, as there was lapse of 3 ½ years in paying the amount and the Board incurred heavy expenditure of 4 to 8 lakhs and therefore, the allotment was cancelled and the registration and handing over the house is not binding on the Board and the amount paid by the petitioner was already returned to him through cancellation proceedings dated 18-4-2006, but the same was returned with an endorsement "not claimed". The allegation that the Board is trying to dis-possess the petitioner is denied and stated that the petitioner was not in possession on the date of filing of the writ petition as the allotment was cancelled and the entire amount was refunded and possession was taken over by the Board. The Board came to know that the petitioner and others broke upon the lock and trespassed into the said house, in which the Board is running the Sub Division Office, therefore, a complaint was lodged before the Station House Officer, Kukatpally Police Station and accordingly F.I.R. No.416 dated 23-4-2006 was

registered. The police recovered the furniture and handed over the same to the Board and the Police locked the house and kept under police control and thereafter, it was handed over to the Board. As on the date of filing of the counter i.e., on 27-9-2006, the Board is in possession of the house. The entire amount deposited by the petitioner in a sum of Rs.9,16,909/- was already sent to the Canara Bank with a request to adjust the same to the loan advanced by it and pay back the balance amount to the petitioner.

The Manager of Canara Bank, SSI., Branch, Kukatpally filed a counter in W.P.No.16015 of 2006, stating that based on the allotment letter, allotting the said house in favour of the petitioner by the Board, the bank sanctioned a loan of Rs.6,40,000/- on the understanding that the property purchased by the petitioner has to be mortgaged in favour of the Bank to secure the said housing loan and the bank forwarded the demand draft for Rs.7,13,409/- to the Board i.e., sanctioned loan amount of Rs.6,40.000/- plus margin money deposited by the petitioner on 30-11-2005 and the Board received the said amount on 30-11-2005 itself. As per the agreement, the petitioner has to deposit the sale deed in the bank as the loan transaction was a mortgage transaction. While so, the bank surprised to receive the letter of the Board dated 10-7-2006 enclosing the cheque for Rs.9,16,909/- to credit the same to the

loan account of the petitioner. As per the interim orders of this Court, not to take any action pursuant to the said letter, the loan account could not be closed.

The Inspector of Police, Kukatpally Police Station filed a counter stating that based on the complaint filed by the Deputy Executive Engineer of the Board dated 23-4-2006 alleging that on 22-4-2006, some unknown persons have broke open the lock and took away the office materials consisting of two tables, four chairs having office files, a case in Crime No.416 of 2006 was registered under Sections 448 and 427 of the Indian Penal Code on 23-4-2006 against the petitioner and two others. The petitioner was arrested on 24-4-2006 and later he obtained bail. After investigation, a charge sheet was filed and it was numbered as C.C.1478 of 2006 on the file of the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur.

After perusal of the counters, this Court passed a common order in the Miscellaneous Petitions in all the three writ petitions on 14-12-2006 to the following effect:-

> "Post after four weeks, as the parties are seriously interested in negotiating their disputes. The Vice Chairman and Housing Commissioner of the A.P., Housing Board has expressed to this Court through its standing counsel Sri J.Prabhakar that he is personally looking into the petitioner's grievance with regard to the non-registration of the house allotted to him in Kukatpally Housing Colony, Hyderabad, despite having obtained the cheque for full payment of the amount payable by the petitioner.
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> Learned standing counsel for the A.P. Housing Board states that the petitioner has been illegally dispossessed from the premises by the officers of the A.P. Housing Board and will be

put back into possession forthwith i.e., by the evening of 14-12-2006.

Learned counsel for the petitioner agrees that the petitioner will take back possession of the house in question from the A.P. Housing Board.

List after four weeks."

It is stated that pursuant to the said orders of this Court, the petitioner was put back in possession by the evening of 14-12-2006 itself and the petitioner is in possession of the said house.

The perusal of the records goes to show that as per the letter No.91/EM/EE(WD)/Ph.V/HIG/2000, dated 4-1-2001, the Board decided the final cost of HIG house at Phase V allotted under 30% category be fixed at Rs.5,82,700/- per each HIG house excluding additional amount of Rs.27,800/- and the petitioner was allotted house No.91 and the petitioner was informed that he can make the payment of the balance sale price in 48 quarterly instalments, which will be worked and intimated in due course. Admittedly, the petitioner was not at all informed through any letter about the quantum of instalments. There is no proof of sending any intimation, fixing the quantum of instalments amount. After the aforesaid letter, in fact, the petitioner himself addressed a letter dated 25-11-2005 requesting the Board to inform the amount payable by him and in response to the said application, the Board vide its letter No.HIG91/Phase-V/EE.WD/1992, dated 26-11-2005 requested the petitioner to pay the final cost worked out to Rs.7,56,059/- as on 30-11-2005. Accordingly, the petitioner paid an amount

of Rs.7,13,409/- through the demand draft drawn on Canara Bank, which has been received by the Board. Thereafter, the Executive Engineer of the Board, vide his handing over letter No. HIG 91/Ph.V/92, dated 23-1-2006 stated that the petitioner was allotted the said house as he has completed with the conditions set out in the allotment letter and he was requested to present before the Deputy Executive Engineer, who is authorized to hand over possession of the said house. Accordingly, the petitioner took possession of the said house. The second respondent also addressed letters to the Divisional Engineer, A.P. Transco and Water Works Department to release the electricity and water connections. Thus, there is no dispute with regard to the handing over possession of the said house in favour of the petitioner and also completing with the conditions set out in the allotment letter and payment of final cost and in fact, the agreement of sale was executed by the Executive Engineer of the Board in favour of the petitioner on 24-1-2006.

It is also not in dispute that the petitioner himself addressed letter dated 14-2-2006 to arrange registration of the said house, but as there was no response, the petitioner himself addressed a letter dated 15-4-2006 to arrange the format of the sale deed, process fee etc., as well as the telegram dated 20-4-2006. The perusal of the record further goes to show that the officials of the respondents have illegally

started interfering, which led to file W.P.No.8421 of 2006 for a direction to execute the sale deed as well as W.P.No.9092 of 2006 declaring the action of the police in interfering with the civil disputes as illegal. After filing of the said writ petitions alone, the letter dated 10-7-2006 was addressed by the Board to the Canara Bank.

Admittedly, the so-called cancellation order dated 18-4-2006 was not at all served on the petitioner and there is no evidence about sending the amount of Rs.9,16,909/- in favour of the petitioner. There is no justification on the part of the Board to address the said letter dated 10-7-2006 to the Banker of the petitioner enclosing the cheque for an amount of Rs.9,16,909/- to the bank to adjust the same to the loan account and pay back the balance amount to the petitioner. There is no privity of contract between the Board and Canara Bank and therefore, the action of the Board in addressing the letter dated 10-7-2006 to Canara Bank is illegal, arbitrary and un-sustainable. There is no any justification on the part of the Deputy Executive Engineer of the Board in lodging a complaint before the Inspector of Police, Kukatpally Police Station on 23-4-2006. The perusal of the records goes to show that the Board high handedly dispossessed the petitioner pursuant to the alleged order said to have been passed by the Vice Chairman and Housing Commissioner of the Board vide his

proceedings dated 18-4-2006 and even before service of the said order, on the same day, possession of the house was taken on 18-4-2006 at 11.00 A.M., without any justification and filed a complaint, which led to registration of crime No.416 of 2006 and after filing the charge sheet, the case was numbered as C.C.1478 of 2006 and pending on the file of the IX Metropolitan Magistrate, Cyberabad, Kukatpally. The alleged cancellation of the allotment vide letter dated 18-4-2006 is illegal, without giving any notice to the petitioner and in utter violation of the principles of natural justice. There is no proof of any material that the Board sent the cheque for an amount of Rs.9,16,909/- to the petitioner.

The action of the Board goes to show that there is a serious transgression of abuse of public office by the officials of the Board, which requires condign and relentless pursuit of such unlawful elements for excision from public service. The Board is an instrumentality of the State and this Court hopes and trusts that the Vice Chairman and Housing Commissioner, who is the administrative head of the Board is stated to be a senior member of the Indian Administrative Service is conscious of rational legal obligations of the Board as an instrumentality of the State and the obligations of its officers to maintain integrity of the public services and will take appropriate action commensurate with the gravity of the admitted offence of forcible dispossession of a citizen from his lawful possession of

the property under the colour of office, without the due process of law and in abuse of public office.

The complaint, which led to the registration of crime No.416 of 2006 on the file of the Station House Officer, Kukatpally Police Station also inconsistent with the facts, in view of the admission on behalf of the Board that the possession of the premises was handed over to the petitioner in January, 2006 and further allegation that there is no lawful dis-possession of the petitioner from the premises except by unlawful employment of force by the officers of the Board, there could have been no conduct of the petitioner entering upon his already lawful possession by forcible dispossession of the Board. The Board has divested itself of its possession of the premises in question in January, 2006 to the petitioner. The petitioner, therefore, lawfully continuous to be in possession of the property *de jure* though *defacto* unlawfully disposed by the officers of the Board.

In view of the aforesaid facts and circumstances of the case and for the reasons stated above, the writ petitions are liable to be allowed. Insofar as the final cost of payment is concerned, there is no dispute that the second respondent vide his letter dated 26-11-2005 worked out the total cost payable by the petitioner at Rs.7,56,059/- and as against the said demand, the petitioner paid a sum of Rs.7,13,409/- and therefore, the petitioner is still liable to pay a sum of Rs.42,650/-. The

petitioner is permitted to pay the said balance amount of Rs.42,650/- within two weeks from the date of receipt of copy of this order. On deposit of Rs.42,650/-, the Board is directed to execute the sale deed in favour of the petitioner forthwith.

The writ petitions are accordingly allowed with costs.

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V.ESWARAIAH, J

Date: 05-10-2007.

Shr.